

# Congress of the United States

## House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

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January 23, 2019

Mr. Pat Cipollone  
Counsel to the President  
The White House  
1600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20500

Dear Mr. Cipollone:

The Committee on Oversight and Reform is launching an in-depth investigation of the security clearance process at the White House and Transition Team in response to grave breaches of national security at the highest levels of the Trump Administration, including by former National Security Advisor Michael Flynn and others.

The goals of this investigation are to determine why the White House and Transition Team appear to have disregarded established procedures for safeguarding classified information, evaluate the extent to which the nation's most highly guarded secrets were provided to officials who should not have had access to them, and develop reforms to remedy the flaws in current White House systems and practices. The investigation also will seek to determine why the White House is currently defying federal law by failing to provide to Congress information about its security clearance process required by the SECRET Act.

Last year, General John Kelly, President Trump's Chief of Staff at the time, conceded that there are major "shortcomings" with the White House's security clearance process. He warned that the White House "should—and in the future, must—do better," and he stated that "now is the time to take a hard look at the way the White House processes clearance requests."<sup>1</sup>

I agree. For the past two years, I have sought information with other Committee Members about a series of extremely troubling incidents regarding the security clearances of some of President Trump's top aides, but the White House has refused to provide the information we requested, often ignoring our requests completely.

I appreciated our meeting last week, and I am in receipt of your January 11, 2019, letter acknowledging my letter on December 19, 2018, renewing requests from the Committee's

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<sup>1</sup> Memorandum from General John F. Kelly, Chief of Staff, to Don McGahn, Counsel to the President, et al., The White House (Feb. 16, 2018) (online at <http://apps.washingtonpost.com/g/documents/politics/read-kellys-memo-of-proposed-changes-to-white-house-security-clearance-process/2777/>).

Republican Chairmen in 2017 and 2018. However, the White House response to our requests over the past two years has been wholly inadequate. For example:

- The White House did not provide information about its failure to suspend the security clearance of General Flynn after Acting Attorney General Sally Yates personally warned White House Counsel Don McGahn that General Flynn had lied to Vice President Michael Pence and others about secret conversations he had with the Russian Ambassador to the United States.<sup>2</sup>
- The White House did not provide information about its failure to suspend the security clearance of Senior Adviser to the President Jared Kushner after Mr. Kushner failed to disclose his own meetings and conversations with Russian officials—and allowed other White House officials, and the American people, to be misled about his communications.<sup>3</sup>
- Vice President Pence, in his role as head of the Transition Team, did not provide information about whether the Transition Team submitted a security clearance application for Michael Flynn, Jr., the son of General Flynn, despite claims that he was merely assisting with scheduling matters.<sup>4</sup>
- The White House did not provide any non-public documents about why former Staff Secretary Robert Porter was allowed to continue working with an “interim” security clearance after the Federal Bureau of Investigation (FBI) provided the White House with four reports of derogatory information from Mr. Porter’s background investigation relating to serious allegations of domestic violence.<sup>5</sup>
- The White House did not provide information about the reported rejection of an application for access to Sensitive Compartmented Information (SCI) for National Security Council Senior Director Robin Townley, who served as one of the top deputies to General Flynn.<sup>6</sup>

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<sup>2</sup> Letter from Ranking Member Elijah E. Cummings et al., Committee on Oversight and Government Reform, to Reince Priebus, White House Chief of Staff (June 21, 2017) (online at <https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/2017-06-21.%20Dem%20Members%20to%20White%20House%20COS%20re.%20Flynn%20Kushner%20Clearances.pdf>).

<sup>3</sup> *Id.*

<sup>4</sup> Letter from Ranking Member Elijah E. Cummings, Committee on Oversight and Government Reform, to Vice President Michael Pence (Dec. 18, 2017) (online at <https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/2017-12-18.%20EEC%20to%20VP%20Pence.pdf>).

<sup>5</sup> Letter from Marc T. Short, Assistant to the President, The White House, to Chairman Trey Gowdy, Committee on Oversight and Government Reform (Mar. 8, 2018) (online at <https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/8%20March%202018%20OGR%20Letter.pdf>).

<sup>6</sup> Letter from Ranking Member Elijah E. Cummings, Committee on Oversight and Government Reform, to General John Kelly, White House Chief of Staff (Mar. 6, 2018) (online at <https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/2018-03-06.EEC%20to%20Kelly-WH%20re%20Townley%20SCI%20Application.pdf>).

- The White House did not provide information about why President Trump's personal assistant, John McEntee, was fired and immediately rushed out of the White House on March 13, 2018, reportedly because of a non-specified security concern.<sup>7</sup>
- The White House did not provide information about whether current National Security Advisor John Bolton disclosed his previous contacts and work with Maria Butina, a Russian national who has now pleaded guilty to conspiring to act as an agent of the Russian government.<sup>8</sup>
- The White House did not provide documents relating to General Kelly's review of the White House security clearance processes, which reportedly found that 34 White House officials who had started working on the first day of the Trump Administration were still working with interim security clearances as of November 2017 and that more than 130 political appointees in the Executive Office of the President were working with interim security clearances as of that date.<sup>9</sup>
- The White House is currently in violation of H.R. 3210, the SECRET Act—a law passed by both houses of Congress with bipartisan support and signed by President Trump on May 22, 2018—requiring the White House to submit a report to Congress by August 2018 on its procedures for adjudicating security clearances.<sup>10</sup>

In addition to the examples above, news reports have raised significant questions about other incidents:

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<sup>7</sup> Letter from Ranking Member Elijah E. Cummings, Committee on Oversight and Government Reform, to General John Kelly, White House Chief of Staff (Mar. 13, 2018) (online at <https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/2018-03-13.EEC%20to%20WH%20re.John%20McEntee.pdf>).

<sup>8</sup> Letter from Ranking Member Elijah E. Cummings, Committee on Oversight and Government Reform, and Ranking Member Stephen F. Lynch, Subcommittee on National Security, to General John Kelly, White House Chief of Staff (Aug. 20, 2018) (online at <https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/2018-08-20.EEC%20Lynch%20to%20Kelly-WH%20re%20Bolton%20SF86%20Information%20Request.pdf>).

<sup>9</sup> *CNN Exclusive: At Least 100 White House Officials Served with 'Interim' Security Clearances Until November*, CNN (Feb. 15, 2018) (online at [www.cnn.com/2018/02/14/politics/security-clearances-white-house/index.html](http://www.cnn.com/2018/02/14/politics/security-clearances-white-house/index.html)); *Scores of Top White House Officials Lack Permanent Security Clearances*, NBC News (Feb. 14, 2018) (online at [www.nbcnews.com/politics/white-house/scores-top-white-house-officials-lack-permanent-security-clearances-n848191](http://www.nbcnews.com/politics/white-house/scores-top-white-house-officials-lack-permanent-security-clearances-n848191)).

<sup>10</sup> Letter from Ranking Member Elijah E. Cummings et al. to Chairman Trey Gowdy, House Committee on Oversight and Government Reform (Sep. 20, 2018) (online at <https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/2018-09-20.OGR%20Dems%20to%20Gowdy-OGR%20re%20SECRET%20Act.pdf>).

- On May 1, 2017, the *Associated Press* reported that former Deputy Assistant to the President Sebastian Gorka was “unable to get clearance for the National Security Council” despite being hired into the West Wing as a counterterrorism advisor.<sup>11</sup> Mr. Gorka reportedly remained on the White House payroll for 207 days.<sup>12</sup>
- On February 2, 2018, the *New York Times* reported that former Deputy National Security Advisor K.T. McFarland withdrew her nomination to serve as ambassador to Singapore after it was revealed that she misrepresented to the Senate her involvement in phone calls between General Flynn and Russian Ambassador Sergey Kislyak on December 29, 2016.<sup>13</sup>

For all of these reasons, the Committee requests that you produce the following documents by February 6, 2019, covering the period from November 8, 2016, to the present:

1. Past and current White House or White House Personnel Security Office policies, protocols, and practices, as well as all documents reflecting changes to those policies, protocols, and practices, related to the following topics:
  - a. requesting, assessing, adjudicating, denying, granting, suspending, or revoking background investigations, clearance to work at the White House, interim security clearances, and permanent security clearances at the Secret, Top Secret, and SCI levels; and
  - b. granting access to sensitive or classified information to individuals who were convicted of crimes, or are or were under investigation by law enforcement authorities;
2. All communications with members of President Trump’s Transition Team referring or relating to the seeking of background investigations, White House clearances, interim security clearances, or permanent security clearances, including communications related to the withdrawal of applications, the reporting of any derogatory information, and the outcome and date of any adjudication decisions;
3. Documents sufficient to show all White House employees and contractors who have applied for background investigations, interim security clearances, or

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<sup>11</sup> *Trump Adviser Sebastian Gorka Expected to Leave White House, Official Says*, Associated Press (May 1, 2017) (online at [www.latimes.com/politics/washington/la-na-essential-washington-updates-trump-adviser-sebastian-gorka-to-leave-1493650018-htlmstory.html](http://www.latimes.com/politics/washington/la-na-essential-washington-updates-trump-adviser-sebastian-gorka-to-leave-1493650018-htlmstory.html)).

<sup>12</sup> *What the Forward Really Said About Gorka—And Why We’re Proud We Did*, The Forward (Aug. 30, 2017) (online at <https://forward.com/opinion/editorial/381524/what-the-forward-really-said-about-gorka-and-why-were-proud-we-did/>).

<sup>13</sup> *K.T. McFarland Withdraws Her Nomination to Be Ambassador to Singapore*, New York Times (Feb. 2, 2018) (online at [www.nytimes.com/2018/02/02/us/politics/kt-mcfarland-nomination-ambassador.html](http://www.nytimes.com/2018/02/02/us/politics/kt-mcfarland-nomination-ambassador.html)).

- permanent security clearances, including the dates on which their applications were submitted; the dates on which the FBI reported any information to the White House; the dates on which background investigations, White House clearances, interim security clearances, or permanent security clearances were assessed or adjudicated, or the applications withdrawn; the outcome and date of any adjudications; and the reasons for any suspension or denial of security clearances;
4. Documents sufficient to show all individuals for whom the White House revoked or suspended security clearances, the dates of those revocations or suspensions, and all documents referring or relating to those revocations or suspensions;
  5. Documents sufficient to show all individuals for whom the White House granted access to sensitive or classified information while those individuals are or were under investigation by law enforcement authorities or who previously were convicted of crimes;
  6. All documents related to any assessments done by the White House, FBI, or other agency following the revocation, suspension, or denial of an interim or permanent security clearance to determine the national security risk or potential exposure of national security information;
  7. Documents sufficient to show the type and amount of classified information accessed by each individual at the White House whose security clearance has been suspended or revoked;
  8. Documents sufficient to identify all current and former staff in the White House Personnel Security Office, including ranks, job responsibilities, reporting structures, and roles in the background investigation and security clearance adjudication process;
  9. All documents related to a security clearance or White House clearance granted to any White House employee or appointee for whom any White House Security Personnel Office personnel recommended an unfavorable adjudication decision, including the name of each subject; the dates of the recommendation and decision; the reasons for the recommendation against employing or granting a security clearance to the subject; the reasons for the ultimate decision; and the names of all individuals involved in the adjudication and decision process;
  10. All documents related to General Kelly's February 16, 2018, memorandum regarding Improvements to the Clearance Process, including all drafts, communications, notes, and results informing the Clearance Review;
  11. All documents related to the background investigations, White House clearances, and security clearances of John McEntee or Robert Porter, including all communications to or from the White House Personnel Security Office, the FBI, or any employee of the White House Counsel's Office or the White House Office

of Presidential Personnel;

12. All documents related to the background investigations and security clearances of John Bolton, General Michael Flynn, Michael Flynn, Jr., Sebastian Gorka, Jared Kushner, K.T. McFarland, and Robin Townley, including all communications to or from the White House Personnel Security Office, the FBI, or any employee of the White House Counsel's Office or the White House Office of Presidential Personnel, including:
  - a. all documents and information provided in response to questions in Sections 19, 20A, 20B, and 20C of any security clearance applications, renewal applications, or amendments submitted over the past ten years;
  - b. all documents related to Sections 19, 20A, 20B, and 20C of any security clearance applications, renewal applications, or amendments submitted over the past seven years;
  - c. all documents relating to investigative and adjudicative steps taken relating to security clearances, including Guideline B ("Foreign Influence") and Guideline C ("Foreign Preference"); and
  - d. all documents and information provided by Mr. Bolton, General Flynn, Mr. Flynn, Jr., Mr. Gorka, Mr. Kushner, Ms. McFarland, and Mr. Townley, or their associates to the Executive Office of the President relating to their contacts with foreign nationals over the past seven years; and
13. All documents related to H.R. 3210, the SECRET Act, including drafts and communications regarding the failure of the White House to comply with the requirement to submit to Congress a report on its procedures for adjudicating security clearances.

In addition to these documents, the Committee requests transcribed interviews with all personnel in the White House Personnel Security Office, to be scheduled beginning February 11, 2019.

The Committee on Oversight and Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate "any matter" at "any time" under House Rule X. In addition, House Rule X, clause 3(i) specifically charges the Committee with conducting oversight of "the operation of Government activities at all levels, including the Executive Office of the President."

An attachment to this letter provides additional instructions for responding to the Committee's request. If you have any questions regarding this request, please contact my staff at (202) 225-5051.

Mr. Pat Cipollone  
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Thank you for your prompt attention to this matter.

Sincerely,



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Elijah E. Cummings  
Chairman

Enclosure

cc: The Honorable Jim Jordan, Ranking Member

### **Responding to Oversight Committee Document Requests**

1. In complying with this request, produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. Produce all documents that you have a legal right to obtain, that you have a right to copy, or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party.
2. Requested documents, and all documents reasonably related to the requested documents, should not be destroyed, altered, removed, transferred, or otherwise made inaccessible to the Committee.
3. In the event that any entity, organization, or individual denoted in this request is or has been known by any name other than that herein denoted, the request shall be read also to include that alternative identification.
4. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, thumb drive, or secure file transfer) in lieu of paper productions.
5. Documents produced in electronic format should be organized, identified, and indexed electronically.
6. Electronic document productions should be prepared according to the following standards:
  - a. The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
  - b. Document numbers in the load file should match document Bates numbers and TIF file names.
  - c. If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
  - d. All electronic documents produced to the Committee should include the following fields of metadata specific to each document, and no modifications should be made to the original metadata:

BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH, PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE, SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM, CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD,



INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION,  
BEGATTACH.

7. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, zip file, box, or folder is produced, each should contain an index describing its contents.
8. Documents produced in response to this request shall be produced together with copies of file labels, dividers, or identifying markers with which they were associated when the request was served.
9. When you produce documents, you should identify the paragraph(s) or request(s) in the Committee's letter to which the documents respond.
10. The fact that any other person or entity also possesses non-identical or identical copies of the same documents shall not be a basis to withhold any information.
11. The pendency of or potential for litigation shall not be a basis to withhold any information.
12. In accordance with 5 U.S.C. § 552(d), the Freedom of Information Act (FOIA) and any statutory exemptions to FOIA shall not be a basis for withholding any information.
13. Pursuant to 5 U.S.C. § 552a(b)(9), the Privacy Act shall not be a basis for withholding information.
14. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
15. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) every privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author, addressee, and any other recipient(s); (e) the relationship of the author and addressee to each other; and (f) the basis for the privilege(s) asserted.
16. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (by date, author, subject, and recipients), and explain the circumstances under which the document ceased to be in your possession, custody, or control.
17. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, produce all documents that would be responsive as if the date or other descriptive detail were correct.

18. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data, or information not produced because it has not been located or discovered by the return date shall be produced immediately upon subsequent location or discovery.
19. All documents shall be Bates-stamped sequentially and produced sequentially.
20. Two sets of each production shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff at a room of their designation.
21. Upon completion of the production, submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control that reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

### **Definitions**

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, data, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, communications, electronic mail (email), contracts, cables, notations of any type of conversation, telephone call, meeting or other inter-office or intra-office communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape, or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or

otherwise, and whether in a meeting, by telephone, facsimile, mail, releases, electronic message including email (desktop or mobile device), text message, instant message, MMS or SMS message, message application, or otherwise.

3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information that might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
4. The term “including” shall be construed broadly to mean “including, but not limited to.”
5. The term “Company” means the named legal entity as well as any units, firms, partnerships, associations, corporations, limited liability companies, trusts, subsidiaries, affiliates, divisions, departments, branches, joint ventures, proprietorships, syndicates, or other legal, business or government entities over which the named legal entity exercises control or in which the named entity has any ownership whatsoever.
6. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual’s complete name and title; (b) the individual’s business or personal address and phone number; and (c) any and all known aliases.
7. The term “related to” or “referring or relating to,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is pertinent to that subject in any manner whatsoever.
8. The term “employee” means any past or present agent, borrowed employee, casual employee, consultant, contractor, de facto employee, detailee, fellow, independent contractor, intern, joint adventurer, loaned employee, officer, part-time employee, permanent employee, provisional employee, special government employee, subcontractor, or any other type of service provider.
9. The term “individual” means all natural persons and all persons or entities acting on their behalf.